

Message Text

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ORIGIN OES-07

INFO OCT-01 EUR-12 ISO-00 L-03 SS-15 SIG-03 NSCE-00
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TO AMEMBASSY BRUSSELS IMMEDIATE
AMEMBASSY PARIS IMMEDIATE
INFO AMEMBASSY LONDON PRIORITY
AMEMBASSY COPENHAGEN PRIORITY
AMEMBASSY DUBLIN PRIORITY
AMEMBASSY BONN PRIORITY
AMEMBASSY ROME PRIORITY
AMEMBASSY LUXEMBOURG PRIORITY
AMEMBASSY THE HAGUE PRIORITY
AMEMBASSY VIENNA PRIORIT

C O N F I D E N T I A L STATE 111726

USEEC ALSO FOR EMBASSY, USIAEA

E.O. 11652: GDS

TAGS: ENRG, TECH, PARM, EEC

SUBJECT: PRESIDENTIAL ACTION ON TARAPUR LICENSE

REF: A) BRUSSELS 8365 (NOTAL) B) PARIS 13884 (NOTAL)
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1. OPERATIVE PORTION OF TEXT OF NUCLEAR REGULATORY
COMMISSION (NRC) DECISION TO REFER TARAPUR LICENSE TO
PRESIDENT TRANSMITTED IN PARA 5 BELOW. TEXT OF PRESIDENT'S
LETTER EXPLAINING BASIS OF HIS OVERRIDE OF NRC DECISION HAS
BEEN SENT BY USINFO. TEXTS OF VIEWS OF COMMISSIONERS
KENNEDY, GILINSKY, AND BRADFORD BEING POUCHED TO BRUSSELS

AND PARIS.

2. IN REVIEWING THE TARAPUR FUEL EXPORT LICENSE, COMMISSIONERS GILINSKY AND BRADFORD FOUND THEMSELVES UNABLE TO MAKE THE DETERMINATION REQUIRED BY THE NEW NON-PROLIFERATION LAW THAT ALL STATUTORY REQUIREMENTS HAD BEEN MET BECAUSE OF THE LACK OF (IN THEIR VIEW) "...FORMAL ASSURANCES THAT REGARDLESS OF THE EVENTUAL FATE OF THE AGREEMENT ITSELF, BOTH CURRENT AND PREVIOUS CONDITIONS AND RESTRAINTS PLACED ON US-SUPPLIED FUEL, AND ON THE TARAPUR REACTORS THEMSELVES, WILL BE MAINTAINED; OTHERWISE THE CONGRESSIONAL INTENT THAT NO US MATERIAL OR FACILITIES CONTRIBUTE TO EXPLOSIVE USES OF NUCLEAR ENERGY MAY BE FRUSTRATED, IF NOT IN

THIS CASE THEN IN ONE OF THE MANY WHICH WILL FOLLOW IT." ON THE OTHER SIDE, COMMISSIONER KENNEDY STATED THE VIEW THAT THE LICENSE SHOULD HAVE BEEN ISSUED SINCE "...THE COMMISSION IS REQUIRED ONLY TO FIND THAT SAFEGUARDS AS PROVIDED BY PRESENT AGREEMENTS WILL BE APPLICABLE.... CONGRESS CLEARLY LAID OUT A SPECIFIC AND DIFFERENT METHOD FOR OBTAINING ASSURANCES OF SAFEGUARDS TO APPLY BEYOND THE TERM OF EXISTING AGREEMENTS FOR COOPERATION."

3. IN RESPONDING TO INQUIRIES REGARDING RECENT PRESIDENTIAL ACTION ON THE TARAPUR FUEL EXPORT LICENSE YOU SHOULD DRAW ON THE FOLLOWING:
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--THE EXECUTIVE BRANCH CONSIDERS THAT INDIA MEETS THE IMMEDIATELY APPLICABLE CRITERIA CONTAINED IN THE NEW NON-PROLIFERATION LAW FOR NRC LICENSING OF EXPORTS AND, THEREFORE, MADE A FAVORABLE RECOMMENDATION TO THE NRC ON THIS EXPORT. THE LAW PROVIDES A MECHANISM FOR PRESIDENTIAL OVERRIDE IN CASES WHERE THERE HAS BEEN AN AFFIRMATIVE EXECUTIVE BRANCH RECOMMENDATION BUT THE NRC IS UNABLE TO ISSUE THE RELEVANT EXPORT LICENSE. THIS OVERRIDE IS SUBJECT TO A SIXTY-DAY REVIEW BY THE CONGRESS WHICH MAY OVERTURN THE PRESIDENT'S ACTION BY A CONCURRENT RESOLUTION OF DISAPPROVAL.

--IN HIS MESSAGE TO THE CONGRESS TRANSMITTING AN EXECUTIVE ORDER APPROVING THE EXPORT, THE PRESIDENT NOTED THAT THE NEW LAW PERMITS A CONTINUATION OF EXPORTS TO INDIA FOR A PERIOD OF TIME WHILE WE SEEK AGREEMENT TO FULL SCOPE SAFEGUARDS. THIS AGREEMENT WILL BE A REQUIREMENT OF CONTINUING US SUPPLY AFTER 24 MONTHS FROM THE DATE OF ENACTMENT OF THE LAW. THE PRESIDENT BELIEVES THAT, RATHER THAN PREJUDICE PROSPECTS FOR OBTAINING INDIAN AGREEMENT TO SUCH SAFEGUARDS BY REFUSING TO FULFILL AN

EXISTING COMMITMENT TO SUPPLY FUEL THAT IS IMPORTANT TO INDIA'S ELECTRIC POWER GENERATING CAPACITY, WE SHOULD USE THIS TWO YEAR PERIOD TO FIND MUTUALLY ACCEPTABLE WAYS TO MEET INDIA'S ENERGY NEEDS AND OUR NEED FOR FULL SCOPE SAFEGUARDS AND THE ATTAINMENT OF OTHER NON-PROLIFERATION OBJECTIVES.

--AS WE HAVE NOTED PREVIOUSLY, THE US-EURATOM COOPERATION AGREEMENT DOES NOT MEET ALL THE IMMEDIATE EXPORT CRITERIA OF THE NEW LAW AND THEREFORE THE NRC CANNOT ISSUE EXPORT LICENSES FOR EURATOM. THE LAW DOES PERMIT A RESUMPTION OF THESE EXPORTS WHEN EURATOM AGREES TO RENEGOTIATE ITS AGREEMENT WITH THE US. (ADDITIONAL GUIDANCE ON THIS POINT CONTAINED IN STATE 87942.)
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4. FOR YOUR BACKGROUND ONLY, STATE 110013 (NOTAL) EXPLAINS WHY CASE-BY-CASE OVERRIDE OF NRC DENIALS OF EURATOM EXPORT LICENSE APPLICATIONS IS NOT FEASIBLE.

5. BEGIN TEXT OF NRC DECISION:

PURSUANT TO SECTION 126B.(2) OF THE ATOMIC ENERGY ACT OF 1954, THE NUCLEAR REGULATORY COMMISSION HEREBY SUBMITS LICENSE APPLICATION XSNM-1060 (REQUESTING THE AUTHORITY TO EXPORT 156.12 KGS. OF U-235 CONTAINED IN 7638 KGS. OF URANIUM ENRICHED TO A MAXIMUM OF 2.15 U-235 TO INDIA FOR USE IN THE TARAPUR ATOMIC POWER STATION) TO THE PRESIDENT BECAUSE IT IS UNABLE TO MAKE THE STATUTORY DETERMINATIONS REQUIRED FOR ISSUANCE OF THIS LICENSE UNDER THIS ACT.

THE BASIS FOR THE COMMISSION'S DECISION TO REFER THIS LICENSE APPLICATION TO THE PRESIDENT IS THAT THE FOUR COMMISSIONERS ARE EVENLY DIVIDED ON THE QUESTION OF WHETHER OR NOT THE LICENSE IN QUESTION MEETS ALL OF THE STATUTORY CRITERIA THAT THE NRC MUST APPLY. CHAIRMAN HENDRIE AND COMMISSIONER KENNEDY VOTED FOR ISSUANCE AND COMMISSIONERS GILINSKY AND BRADFORD AGAINST ISSUANCE.
END TEXT. VANCE

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